IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 200 OF 1992

State of Maharashtra .. Applicant

versus

Chandrahas Padam Thakur .. Respondent

...

Mr.D.P. Adsule, APP for the State.

Mr.I.J. Mansharamani for the respondent.

CORAM : V.M. KANADE, J

DATED : 13th December 2004.

P.C:-

1. Heard the learned APP appearing on behalf of the State and the learned counsel appearing on behalf of the respondent.

2. The appellant State is challenging the judgement and order of the Metropolitan Magistrate,

35th Court, V.T. Bombay. By the said judgement and order, the learned Magistrate acquitted the accused of the offence punishable u/s.3(a) of the RP(UP) Act 1966. The prosecution case is that the accused was apprehended and he was found to be in possession of five lubricating cones of gun metal worth Rs.65/-. The learned APP has taken me through the judgement and order of the trial Court as also the evidence adduced by the prosecution. From the evidence, it can be seen that the complainant Dubey has not been examined by the prosecution who were the three witnesses who had carried out the entire investigation. Apart from that when the muddemal property was opened in the Court. The alleged five brass pieces were not found in the said bundle and thereafter, the matter was adjourned and after a lapse of three years i.e. on 16th March 1984, the property was shown to PW no.1 for the purpose of identification. This creates a doubt regarding the story of the prosecution as it can be seen that these five pieces were purchases from the open marked and were shown as seized property. The evidence of PW no.1 also cannot be accepted as he has not written his own report at Exhibit-B and it was written by some other person. The evidence of PW no.1 is not corroborated by the other witnesses viz. PW

nos.2 to 4 and these witnesses have not seen the accused while he was carrying the alleged railway property. Thus, the trial Court has correctly acquitted the accused.

3. There is no reason to interfere with the order passed by the trial Court. Appeal is accordingly dismissed.

V.M. KANADE, J